



**IN THE COURT OF I ADDITIONAL DISTRICT &
SESSIONS JUDGE AT CHIKKAMAGALURU**

Dated this the 3rd day of October, 2024

:PRESENT:

Smt. Bhanumathi B.C., B.A.L., LL.B.,
I Addl. District and Sessions Judge,
Chikkamagaluru

S.C.No.95/2024

Complainant : 1. The State by
Town Police, Chikkamagaluru.

2. Sumanth,
S/o Devaraj,
Aged 27 years,
Working in Amazon company,
R/at Naduvina Madakal
Kolibyle, Hesagal post,
Mudigere Taluk,
Chikkamagaluru District.

(Both are represented
by Public Prosecutor)

-VS-

Accused : S.R.Poornesh Kumar,
S/o Late S.P. Rajegowda,
Aged about 47 years,
Agriculturist,
R/at Behind Gowri theatre,
Ramanahalli,
Chikkamagaluru Town.

(Represented by Sri.HTSK,



Chief defense counsel, LADCS)

ORDER

The accused has filed this application under section 439 of Cr.P.C for enlarging him on bail in the above case registered against him for the offence punishable under section 302, 504 and 506 of IPC.

2. By reproducing and denying the allegations made in the charge sheet, it is contended by the accused that he has not committed the offences alleged against him and he is innocent of the same, but he has been falsely implicated in the crime in question. He is permanently residing at the address shown in the cause title having movable and immovable properties and deep roots in the society and as such there is no chance of his abscondance and he is the only bread earner for his family.

3. It is also stated by the accused that he is in judicial custody from the date of his arrest. At present, the complainant police have submitted charge sheet by completing investigation and as such, his presence is not required for further investigation. There is no prima facie material to show that he has committed the offence alleged against him. As per the allegations made in the charge sheet, on 10.05.2024, the police officer requested the casualty medical officer of Mallegowda District Hospital, Chikkamagaluru to keep the dead body of an unknown woman and it indicates that no relative of the deceased had noticed her dead body till lodging of the complaint. However, the complainant had lodged a false complaint against the accused by stating that he had seen the incident,



which is a false story created by him. There is no possibility of this accused involving in the alleged incident as he is having mentally disorder and taken treatment at Nimhan's hospital. The petitioner is ready to abide by the terms and conditions that may be imposed by this court and also to furnish surety for releasing him on bail to the satisfaction of the court. Inter-alia on these grounds, the accused sought for allowing the application.

4. The learned Public Prosecutor has resisted the above application by filing statement of objections. By reproducing the allegations made in the charge sheet, it is contended by the prosecution that after completing investigation, the respondent police have submitted charge sheet against this accused and the materials placed on record prima-facie discloses the involvement of this accused in the crime in question. The trial is yet to be commenced and if at this stage, this accused is released on bail, he may involve himself in the commission of similar offences and he may threaten and intimidate the prosecution witnesses as he is economically and politically powerful. He may also flee from justice and thereby he would hamper the trial and further having regard to the nature and gravity of offence alleged against this accused, the Public Prosecutor has sought for rejecting the application.

5. Despite the service of notice of this application, CW.1, who is the son of the deceased remained absent.

6. Heard arguments and perused the records.



7. The points that arise for the consideration of this court are:-

POINTS

1. Whether the accused has made out any ground to enlarge him on bail in the above case?
2. What order?

8. My findings on the above points are as follows:

- Point No.1 : In negative.**
Point No.2 : As per the final order for the following:-

REASONS

(Note:- It is made clear that the observations made by this court in the course of this order is only in respect of considering the bail application and the same has no bearing on the merits of the case.)

9. **Point No.1** : In the case of **Prashanthkumar Sarkar -VS- Ashish Chaterjee and another** reported in **2010(14)SCC 496**, the Hon'ble Apex court has indicated that the following factors are required to be kept in mind while considering the bail application in respect of a heinous offence:-

- i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;
- ii) nature and gravity of the accusation;
- iii) severity of the punishment in the event of conviction;



- iv) danger of the accused absconding or fleeing, if released on bail;
- v) character, behavior, means, position and standing of the accused;
- vi) likelihood of the offence being repeated;
- vii) reasonable apprehension of the witnesses being influenced, and
- viii) danger, of course, of justice being thwarted by grant of bail.

10. By keeping in mind the above factors, I have carefully perused entire materials placed on record. This court is conscious of the fact that the court cannot and is not supposed to sift the evidence made available by the prosecution at the time of deciding the bail application. However, only for the purpose of deciding whether the accused is entitled for bail or not, I proceed to discuss the facts alleged by the prosecution and whatever I say while disposing this bail application cannot be construed as an expression of opinion on the merits of the main case.

11. It is seen from the record that on 10.05.2024, the complainant police registered a case in Crime No.77/2024 against this accused for the offences punishable under Section 302, 504 and 506 of IPC on the basis of the written complaint lodged by CW.1-Sumanth, who is the son of deceased Kanaka. The accused herein was arrested and produced before the court on 10.05.2024 and since then he is in judicial custody. After completing investigation, the complainant police have submitted charge sheet against accused for the offences punishable under sections 302, 504 and 506 of IPC and after the matter



being committed to the court of Sessions, the Sessions case has been registered and the same is made over to this court for disposal and the same is pending consideration at the stage of hearing before charge. At this stage, accused has come up with this application.

12. The sum and substance of the case of the prosecution is that on 10.05.2024 at about 2.30 a.m, when Smt. Kanaka W/o late Devaraj who used to beg for living was sleeping on the footpath near the wall of Bharathmatha Coffee works near Supreme medicals at IG road, Chikkamagaluru, the accused herein approached her and asked her to press his legs, but she refused to do so. Being enraged by the same, the accused hit her head with a sized stone and when CW.9-Umesh and CW.10-Ravikumar K. went to pacify, the accused abused them in filthy language and threatened them. Even then, CW.9 and CW.10 drove the accused from there and they noticed oozing of blood from the head of Kanaka and as such they admitted her to District Government hospital, wherein she was declared dead by the doctor. Thus, it is alleged that the accused has committed the aforesaid offences.

13. The learned counsel for the accused has vehemently argued that the accused is innocent of the alleged offence, but he has been falsely implicated even though there is no reasonable ground to show his involvement in the crime in question and the accused is having mental disorder and taken treatment at Nimhan's hospital and as such there is no possibility of his involvement in the crime in question.



14. In addition to this, the learned Public Prosecutor has submitted that a stone used in the commission of offence has been recovered by the investigating officer at the instance of accused and as per the FSL test report made available on record, the presence of blood stains of human origin was detected on said stone. Further according to prosecution, CW.9-Umesh and CW.10-Ravikumar are cited as eyewitnesses and they are said to have witnessed the act of accused quarreling with the deceased and hitting her with a stone on her head. At this stage, the statement recorded by the Magistrate under section 164 of Cr.PC requires some consideration and CW.9 and CW.10 are also said to have given statements to the Magistrate under section 164 of Cr.PC to the effect that they have witnessed the act of accused hitting the deceased with a stone on her head and about they admitting deceased to the hospital. Further, as per the autopsy report made available on record, deceased had suffered seven external injuries with corresponding internal injuries and it is opined that the cause of death was due to hemorrhage shock and damage to vital organ like brain. By highlighting the same, the prosecution has contended that the accused had assaulted the deceased on the vital organ of her body with a sized stone and caused grievous fatal injuries resulting in her death and as such, he had sufficient knowledge that by his acts he would be causing the death of said Kanaka and as such there are sufficient materials at this stage to show that the accused had committed the offence punishable under section 302 of IPC.

15. In addition to this, it is to be noted that even the



complainant, who is the son of deceased is a stranger to the accused and as such no reason has been forthcoming at this stage for him to falsely implicate the accused with the crime in question. At this stage, it is difficult to accept the contentions urged by learned counsel for accused that there are no prima facie material against this accused. Having regard to the facts and circumstances of the case and the evidence relied by the prosecution to connect the petitioner with the crime in question, this court is of the humble opinion that the materials placed on record sufficiently makes out a prima facie case regarding the allegations made against the accused and there is no reason to doubt the case of prosecution at this stage.

16. Further, the learned counsel for accused has contended that after completing investigation, charge sheet has been submitted by the police and therefore presence of this accused is no more required for interrogation and as such he is entitled to be released on bail on the said changed circumstance. On the other hand, the learned public prosecutor has contented that the evidence of complainant and other material witnesses, who are cited as eyewitnesses to the incident in question is yet to be recorded and if at this stage, the accused is released on bail, he may threaten, influence and intimidate them and tamper the evidence.

17. In this context it is relevant to note the decision of **Hon'ble Supreme Court** in the case of **Virupakshappa Gowda and another vs State of Karnataka and another** reported in **(2017) 5 SCC**



406, wherein it has been held at para 12 that:-

“On a perusal of the order passed by the learned trial Judge, we find that he has been swayed by the factum that when a charge sheet is filed it amounts to changed circumstance. Needless to say, filing of the charge sheet does not in any manner lessen the allegations made by the prosecution. On the contrary, filing of the charge sheet establishes that after due investigation, the investigating agency having found materials, has placed the charge sheet for trial of the accused persons....”

18. In view of the proposition held in the above case, it is to be noted that filing of charge sheet does not in any manner lessen the allegations made by the prosecution and on the other hand, it strengthens its accusation. Hence, the contention raised by accused that he is entitled to be released on bail since charge sheet has been submitted by the investigating agency, is not acceptable.

19. Further the prime consideration of criminal justice system is fair trial for which witnesses must feel protected for free, frank and fearless deposition and in the case on hand, the evidence of complainant, eyewitness and other material witnesses is yet to be recorded and under these circumstances, this court finds some substance in the apprehension on the part of prosecution. Further, in the given set of facts, the possibility of this accused involving himself in the commission of similar offences cannot be ruled out.



20. In the case on hand, admittedly the charge sheet has already been submitted after completion of investigation and the materials placed on record are sufficient to make out a prima facie case against the accused. The offence alleged against the accused under Section 302 of Indian Penal Code is very heinous, which is punishable with death or imprisonment for life. At this stage, if the accused is released on bail, he may intimidate and influence the prosecution witnesses or he may abscond which would hamper the trial of the case. In a decision reported in **2001(2) Crimes 30(SC)**, the Hon'ble Supreme Court has held that:

“once the charge sheet has been filed in respect of heinous offence under Section 302 of IPC, then under normal circumstances, the accused should not be released on bail, unless on exceptional circumstances”.

21. Therefore, by considering the gravity, seriousness and heinousness of the offence and also considering the fact that the offence alleged against the accused is punishable with death or imprisonment for life and its impact on the society without expressing any opinion on merits or demerits of the case, this court is of the opinion that this is not a fit case to exercise discretion to enlarge the accused on bail at this stage. Accordingly, I answer Point No.1 in negative.

22. **Point No.2:** In the light of above findings, I proceed to pass the following:



ORDER

The application filed under section 439 of Cr.P.C by the accused is hereby rejected.

(Dictated to Stenographer Grade-III directly on computer, script corrected and then signed by me on this the 3rd day of October 2024)

Sd/-
(BHANUMATHI.B.C)
I Addl. District & Sessions Judge,
Chikkamagaluru